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| GARDNER CARTON & DOUGLAS LLP ATTN: PATENT DOCKET DEPT. 191 N. WACKER DRIVE, SUITE 3700 CHICAGO, IL 60606 | | | MOHANDESI, JILA M | |
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/963,734
Filing Date: September 26, 2001
Appellant(s): HAMMOND, DAVID A.

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GROUP 3700

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EXAMINER'S ANSWER

This is in response to the appeal brief filed March 26, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying that there are no other related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-10 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

2,324,194 CAMPIGLIA 7-1943

First Responder First Aid Kits (#1 - #6) ("First Responder") and the National Safety Council "First Aid guide".

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campiglia '194 in view of admitted Prior art, First Responder First Aid Kits (#1-#6), and the National Safety Council "First Aid Guide" cited by applicant. Campiglia '194 discloses a first aid kit carrying case defining an interior which includes means for providing quick access to the interior, the carrying case having a plurality of compartments arranged in a card catalogue/file cabinet-like array and a plurality of packs carried in the compartments. See Figure 1 embodiment and column 1, lines 35-42. Note that the folded regions/bellows of partition 12, 14 and the end walls, which are, folded accordion style. Campiglia '194 clearly teaches at column 1, lines 33-34, that first aid kit items "should be arranged so as to keep mistakes to minimum", and therefore the order of storing the plurality of packs would have been a design choice to one of

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ordinary skill in the art. Campiglia '194 does not appear to teach the first aid kit having a guidebook and matching instructional cards and icons and colors for the packs. The admitted Prior Art, First Responder First Aid Kits (# 1 - #6) contains a plurality of packs containing a plurality of products for management of a particular first aid situation, having an overview card (as seen inside the cover of kit #2) with coordinating colors and matching icons between the various associated medical packs, guidebook, overview card, and instructional cards, etc., of the First Aid Kit so that the contents could be identified and located more easily. The National Safety Council "First Aid Guide" clearly establishes that it is old to assess and treat victims according to a triage system. Therefore, it would have been obvious to one having ordinary skill in the art and in view of the admitted Prior Art, First Responder First Aid Kits (# 1 - #6) to provide a guidebook, overview card and instructional card having coordinating colors and matching icons between the packs and the guidebook, overview card and instructional card to the carrying cases of Campiglia '194 to help the user locate the medical packs and instructions more easily.

It further would have been a design choice and as conventional to take emergency priorities into account when arranging the items in Compiglia '194 "so as to keep possible mistakes to a minimum," as the reference instructs. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the

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intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 8-10 are directed to method of arranging the contents of a first aid kit and a method for administering first aid, which is inherent in the organizing and use of the first aid kit carrying case of Campiglia '194. With respect to claim 7, inasmuch as applicant has defined its carrying case to be an accordion style collapsible case, the carrying case of Campiglia '194 is also accordion style collapsible case.

(Note: reference to claims 16-18, which was inadvertently included as part of the previous office action was removed).

(11) Response to Argument

Applicant's arguments filed September 26, 2001 and with this Appeals Brief have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the above references are directed to a first aid kit, Therefore, it would have been obvious to one having ordinary skill in the art and in view of the admitted Prior Art, First Responder First Aid Kits (# 1 - #6) to provide a guidebook, overview card and instructional card having coordinating colors and matching icons between the packs and the guidebook, overview card and instructional card to the carrying cases of Campiglia '194 to help the user locate the medical packs and instructions more easily.

In response to applicant's arguments against the references individually, one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Campiglia '194 does not teach a specific system of order based on triage principle, the system of order based on triage principles is a very relative definition, which is totally open to personal and subjective interpretation. Since the instant application does not explain how a non-medical user is

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supposed to determine what is most serious situation, the specific system of order would be a design choice and conventional. It would have been obvious to one of ordinary skill in the art at the time the invention was made to take emergency priorities into account when arranging the packs in Compiglia '194 "so as to keep possible mistakes to a minimum," as the reference instructs. Further more with respect to the order of the packs of Compiglia '194, it has been held that rearranging parts of an invention involves only routine skill in the art.

Contrary to applicant's argument the carrying case of Campiglia '194 does have folds and bends like bellows of an accordion. The carrying case of Campiglia '194 does in fact teach a card catalogue/file cabinet-like array.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

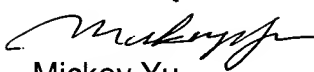
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